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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,632	01/12/2004	Stephen Baumann	370028-00002	1072

3705 7590 07/20/2006

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EXAMINER

FLANIGAN, ALLEN J

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/755,632	Applicant(s) BAUMANN, STEPHEN	
	Examiner Allen J. Flanigan	Art Unit 3753	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 July 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


3Allen J. Flanigan
Primary Examiner
Art Unit: 3753

Continuation of 11. does NOT place the application in condition for allowance because: Applicants have not persuasively shown the prima facie case of obviousness to be erroneous, nor offered objective evidence of nonobviousness by establishing the criticality of the claimed ranges. As the applicants point out, Kawahara et al. clearly teach an alloy that is virtually indistinguishable from the alloy now claimed. The difference between "2.0 %" Fe, the upper limit of Kawahara et al.'s recommended range, and the claimed value ("greater than 2.0%") is virtually nonexistent. A value of Fe of 2.005% by weight, for example, would fall within the claimed range and be indistinguishable from an alloy having exactly 2.0% by weight of iron. Applicant also argues that the facts in Titanium Metals Corp. are "differentiated". While it is certainly true that applicant has amended the claims to remove the anticipation rejections, the holding in Titanium Metals Corp. regarding the obviousness rejection of claim 3 in that case is directly on point to the present fact situation. If anything, the proportions in the current application are much closer than Titanium metals, and only one material, Fe, varies from the claimed range, and that variation is virtually immeasurable. Doko et al. is not "far removed" from the claimed alloy or from Kawahara et al., as applicant asserts; both concern aluminum alloys for finstock, containing Fe, Si, and balance of Aluminum. The only substantive difference is that Doko et al. employ Nickel as a corrective for Fe instead of Mn; both types of correctives are clearly known to those of ordinary skill in the art, as the cited references show. Applicant's "teach away" comments have already been addressed, and no new points are presented concerning this issue. Arguments of "lack of motivation" to combine teachings are also not persuasive. The prior art clearly establishes that the alloy additives are known to be result effective variables; the only modification required to read Kawahara et al.'s alloy on claim 1, for example, is an insignificant variation in the amount of Fe employed, and the Examiner has established that Fe is recognized to be a result effective variable by both references .